No. 60.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907

[redacted]

PRISCILLA BRADFORD, Appellant,

vs.

ROBERT E. MORRISON, Appellee

BRIEF OF APPELLEE

Appeal From Supreme Court, Territory of Arizona

ROBT. E. MORRISON,
In Propria Persona.

(20,667)

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No. 280

PRISCILLA BRADFORD, Appellant,

vs.

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BRIEF OF APPELLEE

The sole question presented for decision in this case is DOES THE LIEN OF A GENERAL JUDGMENT ATTACH TO AN UNPATENTED MINING CLAIM UPON THE DOCKETING OF THE JUDGMENT UNDER THE LAWS OF THE TERRITORY OF ARIZONA ?

The judgment involved in this litigation was docketed in the office of the Clerk of the District Court on the 30th day of December, 1899.

The statutory law on the subject of judgment liens at the date of the docketing of this judgment will be found in Act. No. 50 of the Session Laws of 1891, of the Territory of Arizona, page 50, Sec. 4, which is as follows:

> Every such judgment when so docketed, shall for a period of five years from the date of the rendition thereof, be a lien on the REAL PROPERTY in the county where the same is docketed, except the homestead of every person against whom such judgment shall be rendered and docketed, and which he may have at any time thereafter within said period of five years.

It is conceded and the record shows that at the time of the docketing of this judgment, E. G. Wager, the judgment debtor, was the owner of an undivided one-fourth interest of record in the Blind Girl, the Henry Clay, and the George Washington mining claims, situate in Big Bug Mining District, Yavapai County, Arizona.

The appellee herein contends that unpatented mining claims, for the purpose of establishing a judgment lien thereon, are included under the term REAL PROPERTY as mentioned in the statute above quoted.

That unpatented mining claims are real estate is supported not only by the statutory law of the Territory of Arizona, but by the decisions of the Supreme Court of the United States. We have no quarrel with opposing counsel upon the proposition presented by him involving the question of whether or not real estate was the subject of a judgment lien under the feudal system and the common law, and therefore will not follow him in that line of argument. The question resolves itself into one of construction of the statute above cited.

Counsel for appellant himself has cited various sections of our statutes declaring that for the purposes thereof unpatented mining claims shall be considered real estate. In addition to those sections we direct the Court's attention to Title XII., R. S. A., 1901, Conveyances, Sec. 1:

> Sec. 1. No estate of inheritance or freehold or for a term of more than one year, in lands or tenements, shall be conveyed from one to another unless the conveyance be declared by an instrument in writing, subscribed and delivered by the party disposing of the same, or by his agent thereunto authorized by writing.
>
> Sec. 13. The term "land," as used in this title, is declared to mean and include mines and mining claims.

This would apparently connect all of our statutes which

in any way refer to mining claims as being considered real estate.

The Supreme Court of the United States in Forbes vs. Gracey, 94 U. S. 762, (24 L. 313-314,) uses this very significant language, referring to unpatented mining claims:

> "They are property in the fullest sense of the word, and their ownership, transfer and use are governed by a well defined code or codes of law, and are recognized by the States and the Federal Government. This claim may be sold, transferred, mortgaged and inherited, without infringing the title of the United States."

In the case of Belk vs. Meagher, 104, U. S. 279, (26 L. 735-737), the Supreme Court of the United States says:

> "A mining claim perfected under the law is property in the highest sense of that term, which may be bought, sold and conveyed, and will pass by descent. Forbes vs. Gracey, 94 U. S., 767. There is nothing in the Act of Congress which makes actual possession any more necessary for the protection of the title acquired to such a claim by a valid location, than it is for any OTHER GRANT from the United States."

Justice Elliott in McFeters vs. Pierson, 24 Pac. 1076, (Colorado) holds that an unpatented mining claim is real estate, and citing a number of authorities in support of this position, including Forbes vs. Gracey, and Belk vs. Meagher, supra, declares that title to mining claims passes by descent or purchase the same as other real property, and reaches the conclusion,

> "Thus it appears that a mining claim on the public domain is REAL PROPERTY, and the subject of complete ownership as a claim."

In the case of Hopkins vs. Noyes, 2 Pac. 280, (Montana), the following language is used:

> "The possessory title to a mining claim ought to

> be conveyed by a deed. Such a title is real estate. It is a GRANT by the government to the locator of an interest in the public domain. Robertson vs. Smith, 1 Mon. 414. A location as provided by law, and possession in compliance with the local rules and customs, gives to the locator such an interest in the ground located, as that the government has no interest or estate therein that can be granted or conveyed to any other person; and in such case the government holds the naked title in trust for the locator or his assigns. Having heretofore held, (Robertson vs. Smith,) that the locator takes, as by GRANT from the government, it necessarily follows that the thing granted is real estate. Personal property is not conveyed by grant. The term 'grant' is only applicable to transfers of real property. 2 Washburn on Real Property, 517."

Counsel for appellant has cited several Oregon cases in support of his contention that appellee has no lien upon the property described in the complaint by reason of the general judgment. It will be noticed by the Court that all of these decisions apparently depend upon the Oregon statute, and the Oregon courts following their statute have a leaning towards the idea that the owner of a mining claim has merely a possessory title, and that this should not be treated as real estate in any sense of the word.

Appellee refers to the case of Butte Hardware Co. vs. Frank, et al., 65 Pac. 1, from the Supreme Court of Montana, and insists that it presents practically the same facts, and without question the same statute, involved in the case at bar. The Court says:

> "The question of whether a judgment lien attaches to an unpatented mining claim is new to this jurisdiction and is not devoid of difficulty. Sec. 1197 of the Code of Civil Procedure provides that 'immediately after filing the judgment roll, the clerk must make the proper entries of the judgment under appropriate heads, in the docket kept by him; and from the time the judgment is docketed it becomes a lien upon all

real property of the judgment debtor not exempt from execution in the county owned by him at the time, or which he may afterwards acquire, until the lien ceases. The lien continues for six years unless the judgment be previously satisfied.'"

The Court then asks the question, "Is an unpatented mining claim real property of the owner?" and answers in this language·

> "This question must be answered in the affirmative. There is no need to argue this point as it seems to be settled by authority that unpatented mining claims are real estate. Robertson vs. Smith, 1 Mon. 410; Hopkins vs. Noyes, 2 Pac. 280; Tibbitts vs. Ah Tong, 2 Pac 759."

The Court then uses the language of the Supreme Court of the United States:

> "They are property in the fullest sense of the word. They may be sold, transferred, mortgaged, and inherited without infringing the title of the government. They may be sold to enforce a lien for taxes. Forbes vs. Gracey, 94 U. S. 762, 24 L. Ed. 313."

And citing also State vs. Second Judicial Dist. Ct., 24 Mon. 330, 61 Pac. 882, the Court continues:

> "We can not do else, in the light of authority, than hold that unpatented mining claims are real estate, and that therefore a judgment duly docketed as provided in Section 1197 supra, is a lien upon them, with all other real estate belonging to the judgment debtor."

The learned judge who wrote the opinion in this case discusses the proposition of abandonment raised by counsel for appellant that upon a locator deeding his property he commits an act of abandonment, and uses this language:

> "It would be absurd to permit sales for the benefit of the vendees, and then declare such sales proof of abandonment of all rights of the grantor."

In the opinion of the Supreme Court of the Territory of

Arizona upon this case, 84 Pac. 6, the Court says:

> "The action brought by the plaintiff herself (appellant herein) to quiet her title is brought under the provisions of the statute authorizing actions to quiet title to real property, and can only be maintained under the statute upon the theory that such interest in the mining claims is real property."

The statute referred to is found in R. S. A., 1901, Title LXXI., Chap. 1, Action to quiet title, which begins:

> "Sec. 1, An Action to determine and quiet the title to REAL PROPERTY may be brought by any one having, or claiming, an interest therein, * * * ."

In conclusion appellee respectfully insists that the statutory law of Arizona, the decisions of the Supreme Court of the United States, and authorities cited herein from State courts, all support with great firmness appellee's position that in the Territory of Arizona, upon the docketing of a general judgment a judgment lien attaches to unpatented mining claims.

The judgment of the lower court should be affirmed, with costs.

Respectfully submitted,

ROBT. E. MORRISON,

In Propria Persona.